



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 700 0600 0027 1155 2741

March 16, 2009

Mr. Ben Gale, Director
Santa Clara County
Department of Environmental Health
1555 Berger Drive, Suite 300
San Jose, California 95112-2716

Dear Mr. Gale:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Santa Clara County Certified Unified Program Agency (CUPA) on January 14 and 15, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Santa Clara County's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Status Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Status Reports to Mary Wren-Wilson every 90 days after the evaluation date. The first deficiency progress report is due on April 20, 2009.

Cal/EPA also noted during this evaluation that Santa Clara County CUPA has worked to bring about a number of local program innovations, including maintaining excellent coordination with its Participating Agencies and other CUPAs for consistency and consolidation within the County. In addition, Santa Clara County is utilizing and maintaining the Unidocs website, including the online hazardous materials inventory project. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Jim Bohon for]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Sent via email:

Ms. Nicole Pullman
Hazardous Materials Program Manager
Santa Clara County
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Mr. Terry Snyder
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Mr. Jeffrey Tkach
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Mr. Kevin Graves
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Mr. Ben Gale
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cc: Sent via email:

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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: SANTA CLARA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH

Evaluation Dates: January 14 and 15, 2009

EVALUATION TEAM

Cal/EPA: Mary Wren-Wilson and Jennifer Lorenzo
SWRCB: Terry Snyder
OES: Jeffrey Tkach
DTSC: Asha Arora

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. Questions or comments can be directed to Mary Wren-Wilson at (916) 323-2204.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	The CUPA and its five participating agencies (PA's) have not fully developed a single unified inspection and enforcement (I&E) program. For example, the plan does not address the responsibilities of the CUPA and the specific activities of its PA's. The inspection frequency schedule for all program elements is not identified. HSC, Ch. 6.11, Section 25404.2 (a)(3) and (4) and CCR, Title 27, Section 15200 (a), (a)(3), and (a)(6) [Cal/EPA]	By July 13, 2009, the CUPA will develop and implement an action plan for consolidating, coordinating and making consistent the inspection and enforcement program across all the Unified Program Agencies (UPAs), to the maximum extent feasible. By January 13, 2010, the CUPA, in conjunction with its PA's will revise their I&E Program Plan to reflect the specific activities of the CUPA and both its PA's.
2	The CUPA is not fully tracking and reporting enforcement actions taken on its Annual Enforcement Summary Report 4. For example, in the last three fiscal years, the PA's informal enforcement numbers are not accurately reported. The PA's re-inspect all their facilities to follow-up on violations in lieu of notice-to-comply self-certifications. CCR, Title 27, Section 15290(a)(3) [Cal/EPA]	Any re-inspection that is conducted to follow-up on violation(s) should be reported as informal enforcement. By September 30, 2009, the CUPA will verify that the enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible.
3	The CUPA did not ensure that its PA's have met the mandated inspection frequency for underground storage tank (UST) facility compliance inspections. Inspection	By April 15, 2009, the CUPA will meet with its PA's and discuss the reasons why UST inspections are not being met

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	<p>frequencies for the last three fiscal years were 88% (05/06), 82% (06/07), and 80% (07/08). The CUPA has met its inspection frequencies for all of their assigned facilities; however, the PA's have not met their inspection frequency.</p> <p>HSC, Chapter 6.7, Section 25288 (a) [SWRCB]</p>	<p>annually. By June 14, 2009, the CUPA, in coordination with its PA's, will develop strategies for meeting the mandated inspection frequency for all UST facilities annually. In the first deficiency progress report, the CUPA will provide the status toward correcting this deficiency. The CUPA and PA's inspection frequencies will be reflected on their Annual Inspection Summary Report 3 and Semi-Annual Report 6.</p>
4	<p>The CUPA is not citing violations in a manner consistent with the definition of a minor, Class II or Class I as provided in statutes and regulations. For example:</p> <p>Most of the inspection reports noted minor violation or no violations. Notice of violations rarely had noted the class of violations.</p> <p>a. In the inspection report of March 30, 2006, conducted at NASA Ames Center, failure to conduct daily tank inspections was noted as a minor violation.</p> <p>b. In the complaint inspection reports of March 29 and July 18, 2007 (complaint number 07-0307-0154 referred by DTSC and U.S. EPA), at Southbay Gunite, Inc., the following violations were cited as minor violations: the illegal discharge of radiator steam cleaning waste water going to dirt, storage of leaking lead acid batteries on floor in an uncovered area, labeling violations, used oil container on top of drums (overfilled), storage of hazardous waste in dented and poor condition containers, and failure to obtain an EPA ID#, and no return to compliance was in the file.</p> <p>The CUPA failed to implement its graduated series of enforcement action.</p> <p>HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6, and Chapter 6.11, Sections 25404, and 25201 CCR, Title 22, Sections 66260.10 and 66262.34, subsection (e)(1)(B) and Title 27, Section 15200 (a) and (a)(9) [DTSC]</p>	<p>Effective immediately, the CUPA will ensure that they are conducting inspections in a manner consistent with state statute or regulation for businesses subject to the hazardous waste generator program.</p> <p>This deficiency is in the process of being corrected. The CUPA has already received hazardous waste violation classification training on December 11, 2008. In addition, violation classification has been recently integrated into the Envision database, which the CUPA continues to upgrade.</p>

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CUPA Representative

Nicole Pullman

(Print Name)

Original Signed

(Signature)

Evaluation Team Leader

Mary Wren-Wilson

(Print Name)

Original Signed

(Signature)

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations provided in this section address activities that are not specifically required of the CUPA by statute or regulation. The recommendations, if any, are provided for continuous improvement and it is the CUPA's decision whether or not to follow the recommendations..

1. **Observation:** Most of the PA's do not have a process for verifying UST facility compliance before issuing permits.

Recommendations: The SWRCB recommends that the CUPA provide their policy and procedure for issuing permits, for facilities in compliance with UST regulations and permit conditions, to the PA's. The PA's may adopt the CUPA's policy and procedure or develop their own which verifies compliance before issuing permits.

2. **Observation:** In the CUPA's CalARP dispute resolution, the address for the Governor's Office of Emergency Services is incorrectly cited.

Recommendation: Update the address in the CalARP dispute resolution to correctly cite State OES address as follows: Director of the Governor's Office of Emergency Services, 3650 Schriever Avenue, Mather, California 95665.

3. **Observation:** The CUPA staff conducted a complete tiered permitting (TP) inspection of Dow Jones on January 7, 2009. During the hazardous waste generator oversight inspection, the CUPA inspector built a good rapport with the facility representatives. The CUPA inspector was also professional and courteous in explaining hazardous waste/TP requirements.

Recommendation: DTSC recommends that the CUPA inspector continue to conduct thorough inspections and provide assistance to facilities.

4. **Observation:** The CUPA is doing an excellent job in ensuring that TP facilities are updating and submitting their annual Permit by Rule notifications.

Recommendation: DTSC encourages the CUPA to continue the good work.

5. **Observation:** The CUPA was able to demonstrate that complaints which were referred by DTSC were investigated in a timely manner.

Recommendation: DTSC suggests that all investigations be documented, either by inspection report or by "note to file" and placed in the facility file. Please notify the complaint coordinator, Nancy Lancaster, via email nlancast@dtsc.ca.gov of the disposition of the complaints.

6. **Observation:** The file review indicated that the CUPA rarely noted EPA ID numbers in the hazardous waste generator inspection reports.

Recommendation: DTSC recommends the CUPA include EPA ID numbers for all hazardous waste generator inspection reports.

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- 7. Observation:** The file review indicated that the CUPA includes documentation that consent has been granted by the owner/operator.

Recommendation: DTSC encourages the CUPA to continue the good work.

- 8. Observation:** Based on the file review of hazardous waste/TP files, DTSC noted that files did not always contain copies of inspection reports. Of the 30 files reviewed, three inspection reports were missing in the files. For example, the most recent inspection report found in the file for U.S. Postal Vehicle Maintenance Service Center was for May 13, 1999. The Envision database indicates that the postal office was inspected on November 29, 2000, and March 8, 2005; however, the 2000 and 2005 inspection reports were not in the facility file. A second facility, Delores Eberhart, DDS, was inspected on January 8, 2007, but the inspection report was not found in the facility file.

Recommendation: DTSC recommends that the CUPA retains copies of the inspection reports in the facility files for a minimum of five years per California Code of Regulations, title 27 or the Santa Clara County's record retention policy.

- 9. Observation:** A review of the "Unified Program Operations Manual" binder indicates various documents from 1998-2002 for the TP program, which includes household hazardous waste.

Recommendation: DTSC recommends that the CUPA updates the manual to reflect changes in the TP program.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The CUPA continues to utilize and maintain the Unidocs Web site, including the online hazardous materials inventory project. Unidocs is an excellent environmental compliance tool and offers various resources for the regulated community, as well as other local government agencies. The CUPA is a founding member and supporter of the Unidocs Web site. Many of the forms and guidance documents available through the CUPA's own Web site are Unidocs documents. One of the CUPA staff members (Mr. Greg Breshears) is the Unidocs Web site coordinator. A Spill Prevention Control and Countermeasure (SPCC) Plan template, which will be accessible on Unidocs, is currently being developed for future use by small aboveground storage tank businesses in lieu of hiring a private consultant to develop the plan.
2. The CUPA has a commendable outreach program. For example, the CUPA continues to maintain an excellent Web site with a wealth of information for the public and regulated community. The CUPA offers hazardous waste management classes to its regulated community at least four times a year. Likewise, the CUPA continually welcomes industry and business presentations on various topics, including new technology, university projects/processes, alternative sources of energy (solar power), etc. The CUPA also administers a household hazardous waste program that includes public outreach. The County and 14 cities participate in the countywide program and share costs based on the number of households served from each jurisdiction. The household hazardous waste program includes accepting hazardous waste from small businesses (conditionally-exempt small quantity generators [CESQGs]).
3. The Santa Clara County CUPA continues to initiate formal enforcement and refer cases to the District Attorney (DA). In the last three fiscal years, the CUPA has initiated a total of nine administrative enforcement orders (AEO's), referred six cases to the DA for civil or criminal prosecution, and collected a total of \$173,538 in penalties and fines. Currently, there are five AEO's pending (in various stages of the AEO process) and one will likely be referred to the DA.
4. The CUPA's self-audit process includes a comprehensive and thorough evaluation of all PA's. The CUPA clearly states the summary of findings for each of the PA's program activities, using the state's CUPA evaluation process as guidance.
5. The CUPA maintains an excellent coordination with its PA's and other CUPA's for consistency and consolidation of the Unified Program within the County of Santa Clara. The CUPA meets with the Santa Clara County Fire Chiefs Hazmat Subcommittee, which includes the Santa Clara County CUPA, its five PAs, and the three other CUPA's within the County every fourth Friday. Sometimes guests, including representatives of the industry, attend the meetings. Every two months (on a first Tuesday), various program related training is provided to Unified Program Agency (UPA) inspectors. In November 2008, Steve Lichten provided two-hour training on the Aboveground Petroleum Storage Act. The trainings, which are usually held in Sunnyvale, are coordinated by the UPA's in the County on a rotational basis.

Every other month, representatives of the CUPA regularly attend the South County Task Force, which includes the DA, Planning Department, representatives of the South County Fire Agencies, and the California Department of Forestry and Fire Protection.

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The CUPA is also actively involved in other CUPA-related functions, including but not limited to: Joint hazmat exercises/drills with Civil Support Group and other responders county-wide, the Bay Area Hazardous Waste TAG, UST TAG, and Bay Area CUPA Forum. In addition, the CUPA has given presentations or provided trainings at CUPA conferences.

In addition, OES observed that the communication between the CUPA and its five PA's in regards to business plan documentation, file maintenance, and inspections are handled exceptionally. The CUPA, its PA's, and the local jurisdictions (fire stations) all communicate very well to ensure that local fire agencies have the most current information and that inspections are conducted in a timely manner. Information is disseminated through the CUPA down to the PA's and then to the local jurisdictions which allows for communication on all levels.

6. During the business plan oversight inspections conducted on January 13, 2009, OES observed that the CUPA inspector was extremely thorough, well-trained and very knowledgeable. The inspector toured the entire facility (vineyard) and was thorough on inspecting every item listed on the Chemical Inventory. The inspector pointed out best practice approaches on storage under the Fire Code, showing that the inspector is versed on regulations outside of the Unified Program. The inspector informed the owner/operator about universal waste, as well as answering any and all questions of the owner/operator. The inspector was extremely helpful in trying to assist the owner/operator come into compliance. The overall business plan inspections observed by State OES were conducted in a very professional and thorough manner.